

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MSC VENTURE CORP., et al.,

## Plaintiffs,

V.

ESMOND GOEI,

Defendant.

CASE NO. C06-1731RSM

## ORDER ON PENDING MOTIONS

ESMOND GOEI,

### Third-Party Plaintiff,

V.

**CYPHERMETRIX, INC., a Delaware**

corporation, et al.,

## Third-Party Defendants.

This matter is before the Court for consideration of plaintiffs' motion to file a Fourth Amended  
plaint, and a motion to extend the date for filing dispositive motions. Dkt. # 88, 90. The motions  
are addressed separately.

## ORDER ON PENDING MOTIONS - 1

(1) Motion for Leave to File fourth Amended Complaint (Dkt. # 88)

Plaintiffs request leave to file a Fourth Amended Complaint to clarify the details of the factual basis of their allegations, and to separate out certain allegations in Claim I into separate claims. No new substantive causes of action nor additional claims for monetary damages have been added. Although defendant has opposed the motion, the Court finds that amendment is justified by the need to conform plaintiffs' factual allegations in Claim I to the evidence as it was revealed during discovery, including the names of specific companies and entities involved. The lateness of the amendment is excused by the lengthy delays that were encountered in obtaining discovery from third parties in Malaysia and Singapore. As noted previously by the Court, these delays are not attributable to dilatory conduct on the part of plaintiffs.

Amendment of the complaint does not prejudice defendants, as the proposed Fourth Amended Complaint does not allege new theories of liability or new requests for damages. To the extent that new claims are enumerated they simply re-allege certain subsets of Claim I as separate bases for liability.

Plaintiffs' motion for leave to amend is accordingly GRANTED. Plaintiffs shall promptly file the Fourth Amended Complaint in the docket of this case.

(2) Motion to Extend Dispositive Motion Filing Deadline (Dkt. # 90)

Together with the motion for leave to amend the complaint, plaintiffs have filed an anticipatory motion to amend the scheduling order to extend the filing deadline for dispositive motions to a date three weeks after the Court has ruled on the motion for leave to amend. The current deadline for filing dispositive motions was January 27, 2009. As the Court had not ruled on plaintiffs' motions by that date, plaintiffs filed a timely motion for partial summary judgment.

While plaintiffs' motion to extend the dispositive motion filing date could now be deemed moot, the Court nevertheless finds good cause to grant it. First, limited modifications in the existing motion for partial summary judgment may be necessary to conform the motion to the specific factual allegations in the Fourth Amended Complaint. Second, the Court has a conflict with the current trial date in this matter and must set a new trial date. The next available trial date is Monday, June 8, 2009.

Accordingly, plaintiffs' motion to extend the dispositive motion filing date is GRANTED IN

1 PART. The dispositive motion date shall be extended to **Thursday, February 26, 2009**. Plaintiffs may  
2 elect to maintain their current motion for partial summary judgment, or may file an amended motion  
3 which conforms to the factual allegations in the Fourth Amended Complaint and the numbering of the  
4 claims thereof, but does not add new bases for summary judgment. In either case, any new or renewed  
5 motion for summary judgment or partial summary judgment filed by either party shall be noted for  
6 **Friday, March 20, 2009**. If no amended motion is filed by plaintiffs, the pending motion for partial  
7 summary judgment (Dkt. # 96) shall be RE-NOTED on the Court's calendar for that date.

8 The trial date in this matter shall be continued to **Monday, June 8, 2009**. The Clerk shall issue a  
9 new scheduling order with pretrial preparation dates (beginning with the Rule 39.1 mediation date)  
10 consistent with this trial date.

11  
12 DATED this 13<sup>th</sup> day of February 2009.

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14 RICARDO S. MARTINEZ  
15 UNITED STATES DISTRICT JUDGE  
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